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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/497,515	02/04/2000	Shuji Hitomi	Q57834	7579

7590

11/06/2002

Sughrue Mion Zinn MacPeak & Seas PLLC  
2100 Pennsylvania Avenue NW  
Washington, DC 20037

EXAMINER
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MERCADO, JULIAN A

ART UNIT	PAPER NUMBER
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1745

DATE MAILED: 11/06/2002

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/497,515

Applicant(s)

HITOMI

Examiner

Julian A. Mercado

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2002.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 11-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Remarks***

This Office Action is responsive to Applicant's amendment filed October 24, 2002.

The objection to the May 14, 2002 amendment under 35 U.S.C. 132 for introducing new matter has been withdrawn.

The finality of this Office Action is restarted in view of the examiner's inadvertent error of not maintaining the rejection of claim 8 under 35 U.S.C. 103(a), as set forth in a prior Office Action.

### ***Claim Rejections - 35 USC § 102 and 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-7, 9 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Mussell et al. (U.S. Pat. 5,620,807).

Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mussell et al. as applied to claims 1-7, 9 and 10 above.

The above rejections are maintained for the reasons of record and will not be reiterated. Applicant's amendment to the present claims, specifically independent claims 1 and 3 in reciting a porous polymer "having numerous pores therein", does not appear to the examiner to further delineate the claimed invention from the prior art. In this regard, Mussell teaches a porous

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polymer having a first region with a porosity of at least 10 percent and a second region with a porosity of at least 82 percent. (col. 5 line 41 and line 66) Thus, by virtue of a porosity throughout the entire layer of the porous polymer, albeit in different degrees of porosity, the porous polymer would naturally flow to have numerous pores therein.

### *Response to Arguments*

Applicant's arguments filed October 24, 2002 have been fully considered but they are not persuasive.

Applicant submits that the porous layer [4] of Mussell "does not contain any catalysts" and that the "alleged porous polymer is provided at the surface of the catalyst layer 1, but not within the catalyst layer as in the present invention". This argument is not persuasive, as the claims are not required to have the polymer within the catalyst layer and hence, such argument is outside the scope of the present claims.

As to the pores in Mussell being formed between the polymer and the filler (in alleged contrast to the pores of Applicant's claimed invention being formed in the polymer itself), this argument is not persuasive as the scope of the present claims, being in open-ended format, does not preclude fillers, carriers or any other additives as part of the polymer composition. As to the disclosed phase-inversion process seemingly resulting in a different porous polymer from that of the prior art, this argument is not persuasive as it is drawn to a product-by-process limitation which, nominally, is not the statutory type of invention presently claimed. The claims are of the statutory type of a product, i.e. an electrode for a fuel cell.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Julian A. Mercado whose telephone number is (703) 305-0511. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick J. Ryan, can be reached on (703) 308-2383. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3599 for regular communications and (703) 305-3599 for After Final communications.

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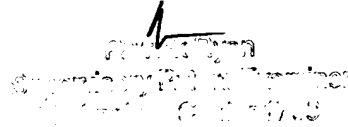
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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



jam

November 4, 2002



1  
November 4, 2002  
Receptionist  
(703) 308-0661